

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
)  
WPS RESOURCE CORPORATION, )  
PEOPLES ENERGY CORPORATION, )  
THE PEOPLES GAS LIGHT and COKE )  
COMPANY, and NORTH SHORE GAS )  
COMPANY, )  
) No. 06-0540  
Application pursuant to Section )  
7-204 of the Public Utilities )  
Act for authority to engage in )  
a reorganization, to enter into )  
an agreement with affiliated )  
interests pursuant to Section )  
7-101 and for such other )  
approvals as may be required )  
under the Public Utilities Act )  
to effectuate the )  
reorganization. )

Chicago, Illinois  
January 9th, 2007

Met pursuant to notice at 10:00 a.m.

BEFORE :

MS. EVE MORAN and MS. LESLIE HAYNES,  
Administrative Law Judges.

APPEARANCES :

FOLEY and LARDNER  
MR. PAUL F. HANZLIK  
321 North Clark Street, Suite 2800  
Chicago, Illinois 60602  
appearing for WPS Resources, Peoples  
Gas Light and Coke Company, Peoples  
Energy Corp and North Shore Gas;

1 APPEARANCES (Cont'd):

2 MS. KAREN LUSSON  
100 West Randolph Street, 11th Floor  
3 Chicago, Illinois 60602  
appearing for People of the State of  
4 Illinois;

5 SCHIFF HARDIN  
MR. OWEN McBRIDE  
6 6600 Sears Tower  
Chicago, Illinois 60606  
7 appearing for Peoples Energy Corp, Peoples  
Gas Light and Coke Company and North Shore  
8 Gas Company;

9 MS. JULIE SODERNA  
208 South LaSalle Street, Suite 1760  
10 Chicago, Illinois 60602  
appearing for Citizens Utility Board;

11 MS. CARLA SCARSELLA  
12 MR. CARMEN FOSCO  
MR. JOHN FEELEY  
13 160 North LaSalle Street, Suite C-800  
Chicago, Illinois 60602  
14 appearing for staff;

15 MR. RONALD D. JOLLY  
MR. J. MARK POWELL  
16 30 North LaSalle Street, Suite 900  
Chicago, Illinois 60602  
17 appearing for City of Chicago;

18 MR. RICHARD ACKER  
35 East Wacker Drive, Suite 1300  
19 Chicago, Illinois 60603  
appearing for Environmental Law and Policy  
20 Center;

21

22

1 APPEARANCES (Cont'd):

2 MR. ALLAN GOLDENBERG  
Assistant State's Attorney  
3 69 West Washington Street, Suite 3130  
Chicago, Illinois 60602  
4 appearing for Cook County State's  
Attorney's Office;

5

6 ROWLAND & MOORE  
MR. STEPHEN J. MOORE  
200 West Superior Street, Suite 400  
7 Chicago, Illinois 60610  
appearing for Retail Gas Suppliers;

8

9 MR. MICHAEL EVERS  
940 West Adams Street, Suite 300  
Chicago, Illinois, 60607  
10 appearing for UWUA Local 18007.

11 SULLIVAN REPORTING COMPANY, by  
Barbara A. Perkovich, CSR

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1		<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	Re- <u>direct</u>	Re- <u>cross</u> By <u>Examiner</u>
3	None.				
4					
5		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>			
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1 JUDGE MORAN: Pursuant to the direction of the  
2 Illinois Commerce Commission, we call Docket  
3 No. 06-0540. This is WPS Resources Corporation,  
4 Peoples Energy Corporation, the Peoples Gas Light  
5 and Coke Company and North Shore Gas Company.

6 It is an application pursuant to Section  
7 7-204 of the Public Utilities Act for authority to  
8 engage in reorganization, to enter into an  
9 agreement with affiliated interests pursuant to  
10 Section 7-101 and for such other approvals as may  
11 be required under the Public Utilities Act to  
12 effectuate the reorganization.

13 May we have the appearances for the  
14 record, please.

15 MR. HANZLIK: Foley and Lardner by Paul F.  
16 Hanzlik, 321 North Clark Street, Suite 2800,  
17 Chicago, Illinois, appearing for the petitioner,  
18 WPS Resources Corporation.

19 MR. McBRIDE: Owen McBride, 6600 Sears Tower,  
20 Chicago, Illinois 60606 appearing on behalf of  
21 Peoples Energy Corporation, the Peoples Gas, Light  
22 and Coke Company and North Shore Gas Company.

1 MS. SODERNA: Julie Soderna, appearing on behalf  
2 of the Citizens Utility Board, 208 South LaSalle,  
3 Suite 1760, Chicago.

4 MS. LUSSON: Karen Lusson on behalf of the People  
5 of the State of Illinois, 100 west Randolph, 11th  
6 Floor, Chicago, Illinois 60601.

7 MR. GOLDENBERG: Alan Goldenberg, Assistant  
8 State's Attorney on behalf of the Cook County  
9 State's Attorney's Office, 69 West Washington,  
10 Suite 3130, Chicago, Illinois 60602.

11 MR. JOLLY: On behalf of the City of Chicago,  
12 Ronald D. Jolly and J. Mark Powell, 30 North  
13 LaSalle Street, Suite 900, Chicago, Illinois 60602.

14 MR. FOSCO: On behalf the staff of the Illinois  
15 Commerce Commission, Carmen Fosco, Carla Scarsella  
16 and John Feeley, 160 North LaSalle Street, Suite  
17 C-800, Chicago, Illinois 60601.

18 MR. ACKER: On behalf of the Environmental Law  
19 and Policy Center, Richard Acker and John Moore,  
20 senior staff attorney, 35 East Wacker Drive, Suite  
21 1300, Chicago, Illinois 60601.

22 MR. MOORE: On behalf of the Retail Gas

1 Suppliers, Stephen Moore, law firm of Roland and  
2 Moore, 200 West Superior Street, Suite 400,  
3 Chicago, Illinois 606010.

4 MR. EVERS: On behalf of the Utility Workers  
5 Union of America, AFL-CIO and Utilities Worker  
6 Union of America, Local 18007, Michael Y. Evers,  
7 940 West Adams Street, Suite 300, Chicago,  
8 Illinois, 60607.

9 JUDGE MORAN: Are those all the appearances?

10 Let the record reflect that those are  
11 all the appearances today. The last time we  
12 established the schedule, we asked parties to  
13 please give us three days notice as to which  
14 witnesses would be being cross examined and which  
15 would not be cross examined so that we could plan  
16 accordingly.

17 We initially received notice that there  
18 were certain witnesses not being crossed and  
19 approximate times for other witnesses. Later we  
20 got a communication that no witnesses would be  
21 crossed, except for some. And then we got a final  
22 communication yesterday indicating that in fact

1   there are no witnesses to be crossed at today's  
2   hearing.  Am I stating that correctly?

3       MR. HANZLIK:  Yes.

4       MR. McBRIDE:  Yes.

5       JUDGE MORAN:  Thank you.  And so can someone fill  
6   us in?

7       MR. HANZLIK:  Let me just start, and then we can  
8   develop a process as your judges -- your Honors  
9   would like as to how we implement what we are going  
10   to report, what the parties are going to report.

11               But the piece that I would like to cover  
12   deals with the waiver of cross examination of all  
13   witnesses.  And in that regard, what the parties  
14   have agreed to is that we would submit our  
15   testimony and accompanying exhibits via affidavit  
16   and the parties are prepared to do that.  What I  
17   would like to do is just to discuss a process that  
18   your Honors would like us to all follow to  
19   accomplish that, via e-docket or some other means,  
20   as appropriate.

21               At this point in time, the waiver of  
22   cross examination, at least on the applicant's



1 part, would apply to all of the witnesses,  
2 except -- I stand corrected. We would waive the  
3 cross examination of all witnesses, however we may  
4 have an objection to the admission of the testimony  
5 by the RGS witness, Mr. Crist. And we will be able  
6 to report further on that subject after some  
7 discussions with RGS counsel Mr. Moore.

8           But at this point I think the first  
9 order of business is to develop a process for  
10 accomplishing the admission of our testimony,  
11 subject to the reservation with respect to  
12 Mr. Crist, intervenor's testimony, and then we also  
13 can report on other matters as well to you.

14       JUDGE MORAN: Okay. I think that that would hold  
15 true for all the parties, everybody wants to put in  
16 their testimony via affidavit here today. I think  
17 that we can go in order, we can start with the  
18 Company and go with each intervening party and  
19 staff.

20           Is everybody prepared, do you know the  
21 numbers of the exhibits that you're putting in?  
22 And what we will do, because there is such a

1 volume, is that we will, in addition to going  
2 through everything today, on the record, we'll send  
3 out a notice or just an e-mail indicating  
4 exactly -- a listing of all that testimony, so that  
5 everybody can double check and make sure that the  
6 record is absolutely complete and correct.

7 JUDGE HAYNES: Everybody does have their  
8 affidavits? Yes?

9 MR. McBRIDE: I think one question, two  
10 questions. Do you want us to give our affidavits  
11 to the reporter and have them marked today or just  
12 identify them and file them on e-docket? And  
13 second, should we assign an exhibit number to the  
14 affidavits? I was going to suggest the next number  
15 in order for each witness.

16 JUDGE MORAN: Yes, exactly. Whatever the  
17 numbering scheme that any individual party is  
18 using, you add another one or you add an A or a B  
19 or some designation like that for your affidavit.

20 MR. HANZLIK: It would be our preference to  
21 e-docket the affidavits following.

22 JUDGE MORAN: I think that would be the correct

1 way to do it, so you can identify the testimony  
2 today that's already been filed on e-docket and  
3 then indicate the number of the affidavit and that  
4 it will be filed on e-docket by close of today.  
5 Can everybody do that? By close of today? Great.  
6 And then we will make the ruling of admission.  
7 Okay. So are we ready to begin?

8 MR. HANZLIK: Yes.

9 JUDGE MORAN: Let's start with the applicants.

10 MR. HANZLIK: For -- I will begin for WPS  
11 Resources Corporation. We have the testimony of  
12 Mr. Larry L. Weyers, W-e-y-e-r-s. The exhibit  
13 numbers are LLW 1.0 and LLW 1.1. We will submit an  
14 affidavit that has been signed by Mr. Weyers with  
15 respect to the authenticity of the testimony that  
16 has been filed on e-docket. And that affidavit  
17 will be identified as exhibit LLW, dash, 2.0.

18 Our next witness was Mr. James F.  
19 Schott, S-c-h-o-t-t Mr. Schott has submitted  
20 testimony which has been marked as JFS 1.0, JFS  
21 2.0, JFS 3.0, JFS 4.0.

22 Mr. Schott also has an exhibit to one of

1 his pieces of testimony, which is JFS 5 -- I'm  
2 sorry, 5.0 is the exhibit number. I would like to  
3 submit two additional exhibits, which I have here,  
4 and which we will e-docket. The first would be JFS  
5 6.0 and that is the Company's response to staff  
6 data request POL 3.01. And I would have an  
7 additional exhibit, JFS 7.0 that would include the  
8 Company's response to staff data request POL 3.02.

9 Both of those data requests state the  
10 Company's agreement with certain conditions  
11 requested by Mr. Reardon in his direct testimony,  
12 Staff Exhibit 5.0 at Pages 12 and 13, and we  
13 wanted, pursuant to discussions with staff counsel,  
14 to make clear that the Company was in agreement  
15 with those staff requests as stated in these two  
16 responses to staff data requests. Mr. Schott's  
17 affidavit is JFS 5.0 and that would be submitted on  
18 e-docket as well.

19 JUDGE HAYNES: Exhibits 4.0, 6.0 and 7.0 already  
20 on e-docket?

21 MR. HANZLIK: 4.0 is on e-docket. 6.0, 7.0 and  
22 5.0 are not on e-docket yet. And so I would

1 propose to do that at the same time we submit the  
2 affidavit.

3 JUDGE HAYNES: Thank you.

4 MR. HANZLIK: But I have hard copies here for the  
5 parties.

6 Next for WPS Resources would be the  
7 testimony of Lawrence T. Borgard, B-o-r-g-a-r-d.  
8 His exhibits are numbered LTB 1.0, LTB 1.1, LTB  
9 1.2, LTB 1.3, LTB 1.4, LTB 2.0 and his affidavit  
10 would be identified as LTB 3.0.

11 Our next witness was Mr. Brad Johnson,  
12 that's J-o-h-n-s-o-n, Bradley Johnson. His  
13 testimony was marked as BAJ 1.0 and BAJ 1.1. His  
14 affidavit would be BAJ 2.0.

15 I also have the testimony of Diane Ford,  
16 F-o-r-d. Her testimony and exhibits are labeled  
17 DLF 1.0, DLF 1.1, DLF 1.2 DLF 1.3, DLF 1.4 and her  
18 affidavit would be DLF 2.0.

19 I have the testimony of Ile Rukis,  
20 R-u-k-i-s. And that testimony bears the exhibit  
21 number of IR 1.0. The affidavit would be  
22 Exhibit 2.0. And then I have the testimony of

1 Thomas J. Flaherty, which bears the Exhibit  
2 No. 1.1, with attachments 1.2, 1.3, 1.4, 1.5, and  
3 1.6. Flaherty's affidavit would be TJF 2.0. And I  
4 believe that completes the exhibit identification  
5 for WPS Resources Corporation.

6 JUDGE MORAN: Okay. Are there any objections to  
7 any of this testimony or exhibits going in?  
8 Understanding that affidavits will be filed today.  
9 Hearing none they are all admitted as recited by  
10 Mr. Hanzlik.

11 (Whereupon, WPS  
12 Exhibit Nos. LLW 1.0, 1.1 and 2.0  
13 were admitted into evidence as  
14 previously marked on e-docket as  
15 of this date.)

16 (Whereupon, WPS  
17 Exhibit Nos. JFS 1.0, 2.0, 3.0,  
18 4.0, 5.0, 6.0 and 7.0 were  
19 admitted into evidence as  
20 previously marked on e-docket as  
21 of this date.)  
22

1 (Whereupon, WPS  
2 Exhibit Nos. LTB 1.0, 1.1, 1.2,  
3 1.3, 1.4, 2.0 and 3.0 were  
4 admitted into evidence as  
5 previously marked on e-docket as  
6 of this date.)  
7 (Whereupon, WPS  
8 Exhibit Nos. BAJ 1.0, 1.1 and 2.0  
9 were admitted into evidence as  
10 previously marked on e-docket  
11 as of this date.)  
12 (Whereupon, WPS  
13 Exhibit Nos. DLF 1.0, 1.1, 1.2,  
14 1.3, 1.4 and 2.0 were  
15 admitted into evidence as  
16 previously marked on e-docket as  
17 of this date.)  
18 (Whereupon, WPS  
19 Exhibit Nos. IR 1.0 and 2.0 were  
20 admitted into evidence as  
21 previously marked on e-docket as  
22 of this date.)

1 (Whereupon, WPS  
2 Exhibit Nos. TJF 1.1, 1.2, 1.3,  
3 1.4, 1.5, 1.5 and 2.0 were  
4 admitted into evidence as  
5 previously marked on e-docket as  
6 of this date.)

7 MR. McBRIDE: Judges, we have additional  
8 testimony offered by witnesses on behalf of Peoples  
9 Energy Corp and its subsidiaries, if I could  
10 identify those at this time.

11 First we have the testimony of Douglas  
12 M. Ruschau, R-u-s-c-h-a-u. This is direct  
13 testimony only, identified as Applicant's Exhibit  
14 DMR-1.0.

15 JUDGE MORAN: Could you go over that?

16 MR. McBRIDE: DMR-1.0 and an additional exhibit  
17 attached Exhibit DMR-1.1. These have been filed on  
18 e-docket previously and Mr. Ruschau's affidavit,  
19 which has not yet been filed on e-docket, will be  
20 identified as Exhibit DMR 2-0.

21 Next we have testimony of Valerie H.  
22 Grace, G-r-a-c-e. Again, this was direct



1 testimony, only. The testimony is identified as  
2 Applicant's Exhibits VG-1.0 and Ms. Grace had  
3 additional exhibits identified as Applicant's  
4 Exhibits VG 1.1, 1.2, 1.3, 1.4, and 1.5. These  
5 have all been filed on e-docket previously and  
6 Ms. Grace's affidavit will be identified as  
7 Applicant's Exhibit VG-2.0.

8           Finally we have testimony offered by  
9 Linda M Kallas, K-a-l-l-a-s. We have two sets of  
10 testimony, first testimony identified as  
11 supplemental testimony of Linda M. Kallas,  
12 Applicant's Exhibit LK-1.0 and additional exhibits  
13 attached to that testimony identified as  
14 Applicant's Exhibits LK-1.1, 1.2 and 1.3. Then  
15 Ms. Kallas also had rebuttal testimony identified  
16 as Applicant's Exhibit LK-2.0, with an additional  
17 exhibit identified as Applicant's Exhibit LK-2.1.

18           All of Ms. Kallas' exhibits that I have  
19 identified have been previously filed on e-docket  
20 and Ms. Kallas' affidavit will be identified as  
21 Applicant's Exhibit LK-3.0. The three affidavits  
22 of the three witnesses have not yet been filed on

1 e-docket, but I will do so today.

2 JUDGE MORAN: Okay, if I could just go back with  
3 one witness on you. On the first witness Ruschau  
4 you said the affidavit was DMR 2-0, is that 2  
5 point?

6 MR. McBRIDE: 2.0. Those are all the exhibits  
7 offered by Peoples Energy Company, the Peoples Gas  
8 Light and Coke Company and North Shore Gas Company.  
9 So we would offer those exhibits into evidence.

10 JUDGE MORAN: Are there any objections to the  
11 admission of these exhibits, noting that the  
12 affidavits will be filed on e-docket today?  
13 Hearing none, they are all admitted.

14 (Whereupon, Applicant's  
15 Exhibits Nos. DMR - 1.0, 1.1 and  
16 2.0 were admitted into evidence  
17 as previously marked on e-docket  
18 as of this date.)

19 (Whereupon, Applicant's  
20 Exhibits Nos. VG - 1.1, 1.2, 1.3,  
21 1.4, 1.5 and 2.0 were  
22 admitted into evidence as

1                   previously marked on e-docket  
2                   as of this date.)  
3                   (Whereupon, Applicant's  
4                   Exhibits Nos. LK - 1.0, 1.1, 1.2,  
5                   1.3, 2.0, 2.1 and 3.0 were  
6                   admitted into evidence as  
7                   previously marked on e-docket as  
8                   of this date.)

9       JUDGE MORAN: Okay, and who wants to go next?

10      MS. SODERNA: I'll go next. CUB and the City  
11 jointly sponsored the direct testimony of  
12 J. Richard Hornby, labeled as CUB/City Exhibit 1.0,  
13 and attachments to the direct testimony, 1.1, 1.2,  
14 1.3, 1.4, 1.5 and 1.6. And CUB/City Exhibit 2.0,  
15 that's the rebuttal testimony of J. Richard Hornby,  
16 with no attachments. And the affidavit will be  
17 labeled 3.0 to be filed on e-docket this afternoon.  
18 And I offer those exhibits into evidence.

19      JUDGE MORAN: Okay. Is there any objection to  
20 the CUB/City exhibits, noting that the affidavit  
21 will be filed today? Hearing none, admitted as  
22 stated by CUB.

1 (Whereupon, CUB/City  
2 Exhibits Nos. 1.0, 1.1, 1.2, 1.3,  
3 1.4, 1.5, 1.6, 2.0 and 3.0 were  
4 admitted into evidence as  
5 previously marked on e-docket as  
6 of this date.)

7 MS. LUSSON: The Attorney General's Office, on  
8 behalf of people of the State of Illinois, City of  
9 Chicago, and the Citizens Utility Board, jointly  
10 sponsored the testimony of David J. Ephron, which  
11 was marked as GCI Exhibit 1.0. And the attached  
12 schedules DJE-1 and DJE-2.

13 GCI, those three parties, also sponsored  
14 the rebuttal testimony of Mr. Ephron, which has  
15 been marked GCI Exhibit 2.0 with no attached  
16 schedules. And I would note that when GCI Exhibit,  
17 what I've identified as GCI 2.0 was filed via  
18 e-docket, it was mislabeled as GCI Exhibit 1.1. So  
19 on the record today I would like to change that to  
20 2.0 and I have copies of that also. And then Mr.  
21 Ephron's affidavit will be labeled as GCI  
22 Exhibit 3.0.

1 JUDGE MORAN: That error that you spoke of, was  
2 that on the document that was filed or was it a  
3 clerk's error?

4 MS. LUSSON: It was on the document, it was  
5 labeled -- mistakenly labeled.

6 JUDGE MORAN: Okay, so you will correct that for  
7 the clerk's office?

8 MS. LUSSON: Yes. And I would move for the  
9 admission of those documents.

10 JUDGE MORAN: Are there any objections to the GCI  
11 exhibit, that being the testimony of Mr. Ephron, as  
12 indicated by Ms. Lusson? Hearing none, all  
13 admitted.

14 (Whereupon, GCI  
15 Exhibits Nos. 1.0, 2.0 and 3.0  
16 were admitted into evidence as  
17 previously marked on e-docket as  
18 of this date.)

19 MR. MOORE: Retail Gas Suppliers have direct and  
20 rebuttal testimony of James L Crist. The direct  
21 was labeled RGS Exhibit 1, the rebuttal was labeled  
22 RGS Exhibit 2. I have separate affidavits for each

1 so I will label those RGS Exhibits 3 and 4.

2 JUDGE MORAN: You are doing a separate affidavit  
3 on each?

4 MR. MOORE: Yes, I have one for each.

5 JUDGE MORAN: Did I understand there was some  
6 objection to this testimony?

7 MR. McBRIDE: Yes. Judge, we, for the record, we  
8 have an objection to the admission of Mr. Crist's  
9 direct and rebuttal testimony. I've discussed this  
10 with Mr. Moore and we are actually hopeful that we  
11 will be able to resolve all the issues raised by  
12 the Retail Gas Suppliers, either today or tomorrow,  
13 and present a resolution to you.

14 But for the record now, we object to the  
15 admission of his testimony. And rather than  
16 getting into the reasons, what I've discussed with  
17 Mr. Moore, what we would like to do is set a  
18 briefing schedule for filing a motion to strike or  
19 a motion in limine, for Mr. Crist's testimony, say  
20 the motion due say this Friday and then we hope  
21 that we'll actually have the substantive issues  
22 resolved and can present that to you before then,

1   so the motion --

2       JUDGE MORAN: Would be moot.

3       MR. McBRIDE: Would be unnecessary.

4       JUDGE MORAN: So we are going to delay ruling on

5   the admission of this testimony based on

6   representations that a motion will be filed on

7   Friday by the applicants and we will set a date for

8   responses on that motion to what date, Mr. Moore?

9       MR. MOORE: Next Wednesday.

10      JUDGE MORAN: And that would be January 17th with

11   replies 2 days later on the 19th.

12      MR. McBRIDE: That would be fine.

13      JUDGE MORAN: Will that work?

14      MR. McBRIDE: Yes.

15      JUDGE MORAN: And all the time hoping that this

16   would be resolved.

17      MR. MOORE: And after we send you notice that

18   we've resolved it you will issue an order admitting

19   the testimony?

20      JUDGE MORAN: Yes. Unless there is any other

21   objection, do we hear any other objection? We

22   don't, then the sole objection to that testimony is

1 by the applicant. If this matter is resolved, the  
2 objection goes away and the testimony will be  
3 admitted and we'll send a letter to that effect.

4 MR. MOORE: The testimony has been prefiled and  
5 I'll put the affidavits on e-docket today, then.

6 JUDGE MORAN: Who is next?

7 MS. SCARSELLA: Staff has some exhibits that we  
8 would like to move into the record. Your Honor,  
9 staff would like to move into the record the  
10 following exhibits. For staff witness Diana  
11 Hawthorne, the direct testimony of Diana Hawthorne,  
12 ICC Staff Exhibit 1.0, with Schedules 1.2 -- I'm  
13 sorry, 1.1 and 1.2 and Attachments A, B and C. The  
14 rebuttal testimony of Diana Hawthorne, ICC Staff  
15 Exhibit 7.0, with Attachment A and the affidavit of  
16 Diana Hawthorne, which is ICC Staff Exhibit 10.0.

17 For staff witness Kite Garlisch --

18 JUDGE MORAN: Hold on a minute, what was the  
19 rebuttal?

20 MS. SCARSELLA: The rebuttal was 7.0 with  
21 Attachment A.

22 JUDGE MORAN: And what?



1 MS. SCARSELLA: Attachment A, it includes an  
2 attachment.

3 JUDGE MORAN: And then the affidavit is 10.0?

4 MS. SCARSELLA: Yes. For staff witness Kite  
5 Garlisch, that's G-a-r-l-i-s-c-h, the direct  
6 testimony is ICC Staff Exhibit 3.0 and the  
7 affidavit is ICC Staff Exhibit 11.0. For staff  
8 witness Dennis Anderson, the direct testimony is  
9 ICC Staff Exhibit 4.0, corrected and the affidavit  
10 is ICC Staff Exhibit 12.0.

11 JUDGE MORAN: Is it filed on e-docket as  
12 corrected?

13 MS. SCARSELLA: Yes, it is. It was filed on  
14 December 1st. For staff witness Wynina A. Pierce,  
15 the direct testimony I will do in two parts, ICC  
16 Staff Exhibit 2.0 corrected with corrected schedule  
17 2.1, was filed on January 5th of 2007. But it also  
18 includes Attachments A, B, C and D, which were  
19 filed on October 31st of '06.

20 JUDGE MORAN: Give me the date again on the A, B,  
21 C, D.

22 MS. SCARSELLA: October 31st.

1 JUDGE MORAN: And those were filed independently?  
2 MS. SCARSELLA: Right.  
3 JUDGE MORAN: Okay, thank you.  
4 MS. SCARSELLA: The supplemental direct testimony  
5 is ICC Staff Exhibit 6.0. The rebuttal testimony  
6 is ICC Staff Exhibit 8.0 with Attachment A. The  
7 affidavit is filed as ICC Staff Exhibit 13.0.  
8 And finally for staff witness David  
9 Reardon, the direct testimony is ICC Staff  
10 Exhibit 5.0, and the rebuttal testimony is ICC  
11 Staff Exhibit 9.0 and the affidavit is ICC Staff  
12 Exhibit 14.0. If the affidavits have not already  
13 been filed, they will be filed by the end of  
14 business day today.  
15 JUDGE MORAN: Okay, thank you. And that's it for  
16 staff?  
17 MS. SCARSELLA: Yes, it is.  
18 JUDGE MORAN: Are there any objections to the  
19 admission of this testimony?  
20 MR. McBRIDE: I don't have an objection, but just  
21 for clarification, did Ms. Kite's name change?  
22 MS. SCARSELLA: Yes, and the affidavit explains

1 that her name was changed from Sheena Kite to  
2 Sheena Kite Garlisch, if I'm pronouncing it  
3 correctly.

4 JUDGE MORAN: Hearing no objection, all of the  
5 evidence as recited by staff is admitted.

6 (Whereupon, Staff  
7 Exhibits Nos. 1.0, 2.0, 3.0, 4.0,  
8 5.0, 6.0, 7.0, 8.0, 9.0, 10.0,  
9 11.0, 12.0, 13.0 and 14.0 were  
10 admitted into evidence as  
11 previously marked on e-docket as  
12 of this date.)

13 JUDGE MORAN: Okay. Is there someone else?

14 MR. ACKER: Thank you. Richard Acker for the  
15 Environmental Law and Policy Center. We would like  
16 to move for the admission of the direct testimony  
17 of Martin G. Kushler, K-u-s-h-l-e-r, which was  
18 filed on e-docket, labeled as ELPC Exhibit 1.0,  
19 which had additional exhibits attached to it as  
20 ELPC Exhibit 1.1, ELPC Exhibit 1.2 and ELPC  
21 Exhibit 1.3, ELPC Exhibit 1.4, and ELPC  
22 Exhibit 1.5. And we will file his affidavit today

1 as ELPC Exhibit 3.0.

2                   We would also like to move the admission  
3 of the rebuttal testimony of Charles Kubert,  
4 K-u-b-e-r-t, which is already been filed in  
5 e-docket as ELPC Exhibit 2.0. With additional  
6 exhibits attached as ELPC Exhibit 2.1, ELPC  
7 Exhibit 2.2 and ELPC Exhibit 2.3 and his affidavit  
8 will be filed on e-docket today as ELPC  
9 Exhibit 4.0.

10       JUDGE MORAN: Are there any objections to the  
11 admission of the testimony by the environmental law  
12 and policy center? Hearing none, they are all  
13 admitted as stated.

14                   (Whereupon, ELPC  
15                   Exhibits Nos. 1.0, 1.1, 1.2, 1.3,  
16                   1.4, 1.5, 2.0, 2.1, 2.2, 2.3, 3.0  
17                   and 4.0 were admitted into  
18                   evidence as previously marked on  
19                   e-docket as of this date.)

20       MR. EVERS: Good morning. The Utility Workers  
21 Union of America International Union AFL-CIO and  
22 the Utility Workers International Union jointly

1 presented the testimony of James Janette previously  
2 identified in the record as UWUA 1.0 direct  
3 testimony, with attachment exhibits UWUA 1.01  
4 through 1.27. And UWUA Exhibit 2.0, rebuttal  
5 testimony with attachment Exhibits 2.01 through  
6 2.04. And with your permission we would move these  
7 exhibits into evidence at this time and we will  
8 file our affidavit by e-docket today.

9 JUDGE HAYNES: Which you will mark as  
10 Exhibit 3.0.

11 MR. EVERS: Yes, your Honor.

12 JUDGE MORAN: Can you please repeat to me the  
13 first exhibit that you referred to?

14 MR. EVERS: That would be UWUA 1.0, the direct  
15 testimony of James Janette with Exhibits 1.01  
16 through 1.27.

17 JUDGE MORAN: 1.0 to 1.27. Okay, thank you. Are  
18 there any objections to the admission of this  
19 testimony as stated? Hearing none, it's admitted.

20

21

22

1 (Whereupon, UWUA  
2 Exhibits Nos. 1.0 through 1.27,  
3 2.0 through 2.04 and 3.0 were  
4 admitted into evidence as  
5 previously marked on e-docket as  
6 of this date.)

7 MR. HANZLIK: Your Honor, I believe I did not  
8 mention the direct testimony of Mr. Flaherty when I  
9 was providing exhibit numbers. That -- Mr.  
10 Flaherty's direct testimony is 1.0, Exhibit 1.0. I  
11 did mention, I believe, the TJF 1.1 through 1.6,  
12 which are the exhibits to the TJF 1.0 and I would  
13 move into evidence Mr. Flaherty's direct testimony  
14 TJF Exhibit 1.0, as well.

15 JUDGE MORAN: I do not have that on my notes, so  
16 it's probably not done. Is there any objection to  
17 the actual testimony, which is TJF Exhibit 1.0?  
18 Hearing none, it's admitted.

19  
20  
21  
22

1  
2 (Whereupon, WPS  
3 Exhibit No. TJF 1.0 was  
4 admitted into evidence as  
5 previously marked on e-docket as  
6 of this date.)  
7 MR. HANZLIK: And can I ask one more question. I  
8 don't know, I was looking the notes, did I mention  
9 that Mr. Weyers has an attachment to his testimony,  
10 which is LLW 1.2, did I move that into evidence?  
11 JUDGE MORAN: No, it's LL.  
12 MR. HANZLIK: W, 1.2, is an attachment to  
13 Mr. Weyers' direct testimony. His direct testimony  
14 is 1.0. And I would move for the admission of 1.2  
15 as well, LLW 1.2.  
16 JUDGE MORAN: Is there any objection to that, LLW  
17 1.2? Hearing none, it's admitted.  
18 (Whereupon, WPS  
19 Exhibit No. LLW 1.2 was  
20 admitted into evidence as  
21 previously marked on e-docket as  
22 of this date.)

1 MR. HANZLIK: Thank you.

2 JUDGE MORAN: Okay. So --

3 MR. McBRIDE: Can we go off the record for a  
4 moment.

5 JUDGE MORAN: Sure, um-hmm.

6 (Discussion off the record.)

7 MR. McBRIDE: Your Honor, the applicants and a  
8 number of the intervening parties have entered into  
9 a memorandum of agreement that addresses resolution  
10 of the remaining issues among those parties and I'm  
11 handing to the judges a copy of the memorandum of  
12 agreement.

13 The parties to this agreement are the  
14 four applicant companies, the City of Chicago, the  
15 Cook County State's Attorney's office, the Citizens  
16 Utility Board, the People of the State of Illinois,  
17 by the Attorney General, the Environmental Law and  
18 Policy Center, the Utility Workers Union of  
19 America, AFL-CIO and the UWUA Local Union  
20 No. 18007. And in addition, staff has also signed  
21 this agreement for the purpose of indicating that,  
22 although it is not a party to the agreement, that



1 staff does not object to the resolution of the  
2 issues that are set forth in the agreement.

3           The format of the document I provided  
4 has been signed by all the parties, by counterpart  
5 signature pages, so you'll note that there are  
6 numerous pages, 6, 7 and 8, but we have a signature  
7 in there someplace on behalf of each of the parties  
8 and the staff. So pursuant, and I've given copies  
9 to all the parties today, pursuant to our  
10 off-the-record discussion, we would propose that  
11 this memorandum of agreement be identified as Joint  
12 Parties Exhibit No. 1.

13           And your preference, Judge, is I can  
14 either provide copies to the reporter right now or  
15 I can file this on e-docket after the hearing.

16       JUDGE MORAN: Doesn't matter to us. Well, we  
17 have to do something. Why don't -- why don't you  
18 file it on e-docket, I think that would be better.

19       MR. McBRIDE: And that's -- so we would offer  
20 Joint Parties Exhibit No. 1 in evidence.

21       JUDGE MORAN: Is there any objection to Joint  
22 Parties Exhibit No. 1? Hearing none, it's

1 admitted.

2 (Whereupon, Joint Parties  
3 Exhibit No. 1 was  
4 admitted into evidence as  
5 previously marked on e-docket as  
6 of this date.)

7 MR. McBRIDE: And not to monopolize, if any of  
8 the other parties have any comment on this, you are  
9 welcome to have them speak.

10 JUDGE MORAN: And please feel free to address us  
11 with this.

12 MS. SODERNA: We all agreed, for once.

13 JUDGE MORAN: I'll just have to read it myself.  
14 Okay. All right, so we have one outstanding little  
15 issue here. How do the parties want to proceed  
16 with the rest of this case?

17 MR. McBRIDE: Let me address the RGS issues and  
18 Mr. Moore can comment. Because I've indicated,  
19 it's our hope that we will be able to enter into a  
20 similar agreement between the applicants and RGS,  
21 with also staff participating by indicating their  
22 non-opposition and to -- if we are able to do so,

1 to file that, hopefully today or tomorrow. And in  
2 the event that that occurs, I would suggest you  
3 might identify, we might identify an Exhibit number  
4 such as Applicant's/RGS Joint Exhibit 1, that would  
5 be used for that filing, should it be forthcoming.

6 JUDGE MORAN: Applicant's/RGS Exhibit No. 1.

7 MR. McBRIDE: Joint Exhibit No. 1.

8 JUDGE MORAN: And if that would resolve the issue  
9 of the dispute on the testimony, then we would be  
10 free to mark the record heard and taken.

11 MR. McBRIDE: Yes and that agreement, if it comes  
12 to fruition, would also eliminate the substantive  
13 issues presented by Mr. Crist's testimony on behalf  
14 of RGS, with the result that there would be no  
15 remaining contested issues in this case. So now  
16 let me address two things here.

17 What we would like and what I hope is  
18 the unlikely event that we do not reach and file an  
19 agreement with RGS, we would like to set a briefing  
20 schedule for briefing the issues with RGS, which at  
21 this time, as a result of the other agreement,  
22 Joint Parties Exhibit 1, are the only outstanding

1 contested issues in the case.

2           In any event, whether those issues are  
3 resolved or not, all the parties or all the  
4 parties, except RGS, as the case may be, will plan  
5 to submit a joint draft order to the applicants and  
6 we have that in progress now and hope to be able to  
7 circulate that to the other parties with whom we  
8 have no issues and -- for their review and comment,  
9 and I'm just stating this generally, but hopefully  
10 get that on file for your Honors' review sometime  
11 next week.

12           So if we're able to, and again hopefully  
13 this will occur, resolve the issues with RGS, then  
14 the draft order would cover everything that needs  
15 to be resolved and filed in the case. If we are  
16 unable to reach resolution with RGS, then I think  
17 their issues go to Section 7-204(b)(6), so that  
18 part of the draft order would be unresolved and  
19 there would be issues related to the finding under  
20 7-204(b)(6), which you and ultimately the  
21 Commission would have to make. But we would have a  
22 submitted draft order that would address all the

1 other required findings and the conditions for  
2 approval in the case.

3           As you know, that there are a number of  
4 conditions for approval that have been proposed in  
5 in case that the applicants have agreed to as  
6 indicated in prior testimony, and the memorandum of  
7 agreement, Joint Parties Exhibit No. 1, list  
8 additional conditions to approval which the  
9 applicants have agreed to with the other parties,  
10 so those would all be reflected in the draft order  
11 as conditions to approval that would be in the  
12 Commission's order.

13       JUDGE MORAN: So that's fine. So as I understand  
14 it, we've got a draft order in the works that will  
15 resolve all of the issues with those parties. The  
16 only issue outstanding that we may need to decide  
17 is the issue with the Retail Gas Suppliers, which  
18 falls under one of the findings that the Commission  
19 is required to make in this kind of situation.

20           So, I guess the only thing -- I think  
21 the joint draft order could be filed as soon as it  
22 is completed and we'll see how this one issue goes.

1 If the issue works itself out, then of course there  
2 would be something added to the draft order. If  
3 not, there would be briefing on that one issue, in  
4 addition to the draft order.

5 MR. McBRIDE: Yes.

6 JUDGE MORAN: That would then be later?

7 MR. McBRIDE: Yes.

8 JUDGE MORAN: Okay, that sounds very reasonable.

9 JUDGE HAYNES: Did we want to set the briefing  
10 schedule for the RGS issue, in case it doesn't go  
11 away?

12 MR. McBRIDE: Yes.

13 JUDGE MORAN: Okay, then let's do that. Can you  
14 give us an idea about the draft order, other than  
15 next week, maybe the end of next week?

16 MR. McBRIDE: Well, I can't speak for the other  
17 parties, because it just -- if you just, by way of  
18 example, if you looked at this, the last  
19 significant 7-204 case before the Commission, I  
20 believe, was the AMRON Illinois Power Case, and  
21 even though that was all resolved at the end, of  
22 course the draft order, at least in a summary

1 fashion summarizes the parties' positions on all  
2 the issues and then presents the ultimate  
3 resolution, which on most all the issues was  
4 agreed. So that was some 50 pages in length. So  
5 just getting through all this material. So I'm  
6 sure that when we get this finished and circulated  
7 to the other parties they will want a few days to  
8 look at it and provide any comments they may have.  
9 So that's why I suggested it may be sometime next  
10 week before we'll be able to file that.

11 JUDGE MORAN: Now, we did set a time for the  
12 motion and now we must set a briefing schedule.

13 MR. McBRIDE: Yes.

14 JUDGE MORAN: So have the parties talked at all  
15 about a briefing schedule?

16 MR. MOORE: No, we haven't, but I would imagine,  
17 since the last reply brief is going to be coming in  
18 on the 19th of January, you'll be ruling sometime  
19 after that and we can have the briefs due a week  
20 after your ruling, simultaneous initial reply  
21 briefs.

22 MR. McBRIDE: I would prefer to have the briefing

1 schedule sort of overlap the motion schedule.

2 JUDGE MORAN: I'm wondering if you can't somehow  
3 work it together.

4 MR. McBRIDE: There is only one issue left here,  
5 it may go away, but I don't want to drag the case  
6 out here over this one issue. So I would  
7 suggest --

8 JUDGE MORAN: Can you do something like an  
9 alternative argument? Yes, we are objecting to  
10 this testimony here for this, this, this and this  
11 reason, in the alternative if the testimony comes  
12 in, this would be our position on the issue raised?

13 MR. McBRIDE: Yes.

14 JUDGE MORAN: Would that make sense?

15 MR. MOORE: Okay.

16 JUDGE MORAN: Got to be a little creative.

17 MR. MOORE: The fast schedule would be doing the  
18 substance, but I don't think we'll be doing it, so  
19 I won't worry about it.

20 JUDGE MORAN: All right, then, let's do that,  
21 let's make the briefing schedule concurrent with  
22 the schedule on the motion.



1 MR. McBRIDE: In a single document?

2 JUDGE MORAN: Pardon me.

3 MR. McBRIDE: Same document?

4 JUDGE MORAN: Yes, you can do the same document,  
5 alternative arguments, A, why we don't want this  
6 testimony in; B, if the testimony does go in, this  
7 is still our position or whatever.

8 MR. McBRIDE: Right, that's fine.

9 JUDGE MORAN: Will that work?

10 MR. FOSCO: Your Honor, if I may, Carmen Fosco on  
11 behalf of staff. Staff did take a position on the  
12 RGS testimony and quite frankly we don't want to  
13 write a brief on the issues, if it's going to  
14 resolve. I mean, if the settlement happens and if  
15 it doesn't I guess we can address it. But I guess  
16 I'm concerned about us knowing whether we have an  
17 issue before we -- how will that happen?

18 MR. McBRIDE: Well, I think this is a little  
19 different than the way we typically do this, but I  
20 think what we worked out here is that the  
21 applicants would make the initial filing, then  
22 staff and RGS could respond on the second date and

1 then the applicants would file a reply brief.

2 MR. FOSCO: That's fine, I was concerned about --  
3 typically we would have simultaneous initial  
4 briefs.

5 JUDGE MORAN: No, this is like -- files the  
6 motion. The movant takes a position and then there  
7 is a respondent taking a position in response to  
8 that.

9 MR. FOSCO: Okay, that's fine, as long as the  
10 schedule happens in that order.

11 JUDGE HAYNES: So staff wouldn't file until the  
12 17th.

13 JUDGE MORAN: And staff would file at the same  
14 time as the Retail Gas. Okay, that's acceptable.  
15 So the briefing schedule will be run concurrent  
16 with the motion that will be filed this Friday,  
17 that is January 12th. The responses by the Retail  
18 Gas and by staff would be on Wednesday,  
19 January 17th. And then the replies and the reply  
20 position would also come in to us on January 19th.

21 MR. McBRIDE: Now, I have one other procedural  
22 matter, getting back to the draft order, which as I

1 said, with the possible exception of the one issue,  
2 would be submitted to your Honors as a joint  
3 proposed draft order by all the parties and I just  
4 throw this open, as to how, if at all, we should  
5 handle an ALJ's proposed order.

6               Let me just say, in the AMRON Illinois  
7 Power Case, a joint proposed order was submitted,  
8 the ALJ in that case, Mr. Albers, when he reviewed  
9 it, I believe he had a number of, what I'll call  
10 editorial non substantive changes -- well, let me  
11 backup. I think the parties submitted the joint  
12 draft order and said, this is acceptable to us to  
13 be the ultimate order for the Commission.  
14 Mr. Albers had some editorial changes, so he issued  
15 a proposed order and gave a very short time like  
16 48 hours to respond. Really to make sure that he  
17 hadn't somehow done violence to the intent of the  
18 parties and so that was the process to file it.

19               So what I'm saying, I don't envision,  
20 again, unless we have the unresolved issue with RGS  
21 outstanding, that there is a need for a lengthy --  
22 ALJ proposed order, a lengthy exception period.

1 And in fact, I would say, again now I'm speaking  
2 only for the applicants here, if the ALJ's review  
3 the order that's submitted and have no changes, the  
4 applicant certainly wouldn't see the need to even  
5 issue an ALJ proposed order.

6 JUDGE MORAN: We could do that by ruling. We  
7 could say we are adopting the proposed order as the  
8 ALJ proposed order.

9 MR. FOSCO: Your Honors, Carmen Fosco on behalf  
10 of the staff. The only thing I mention, and it's  
11 the applicant's case, but there is a requirement in  
12 the Administrative Procedures Act for a brief on  
13 exceptions and since this is not a universal  
14 settlement signed by every single party, so you may  
15 want to allow a short one day period for briefs on  
16 exceptions, even if you make no changes. We  
17 wouldn't object.

18 JUDGE HAYNES: If RGS doesn't settle.

19 MR. FOSCO: We still have Constellation New  
20 Energy. They are a party, but they have not  
21 actively participated, but they are a party.

22 JUDGE MORAN: So they would certainly have a

1 right to file exceptions.

2 MR. FOSCO: I don't think we expect that, but I  
3 just mention it for the record.

4 JUDGE MORAN: There is two things here, though.  
5 One is, if we find -- if there is nothing flawed in  
6 the order after we read it, we could just adopt it  
7 as our own order, send out a ruling to that and  
8 then set a period for exceptions. If we do find a  
9 need to make certain changes, we might grant an  
10 extra 12 hours or 24 hours for those exceptions.  
11 It all depends. I think that we were going to  
12 stick to having as little time for exceptions, only  
13 in the fact that, let's face it, the majority, and  
14 far more than the majority here seems to be on the  
15 same page. Yes, we would have to give  
16 Constellation time, however that time can certainly  
17 be shortened by their lack of participation.

18 MR. FOSCO: And we don't have any objections to  
19 whatever period of time you want to set.

20 JUDGE MORAN: So maybe we cannot say definitely  
21 what we are going to do on that. We can say that  
22 yes, if there is no problem, we will accept the

1 draft order as our proposed order. If we feel a  
2 need to change or pad or whatever, we will do that.  
3 In any event, the turn around time will be kept to  
4 a minimum, based on the majority participation  
5 being in agreement.

6 MR. McBRIDE: Okay, thank you.

7 JUDGE MORAN: Which may be even more in  
8 agreement. I think that's fair. Does everybody  
9 agree with us?

10 MS. LUSSON: So just to be clear, then, so the  
11 hearing examiner's proposed order, whether it be  
12 modified from the draft joint proposed order or  
13 not, would indicate at the bottom the amount of  
14 time for exceptions, if there are changes?

15 JUDGE MORAN: Right. And that's for everybody's  
16 benefit too, because we may make a change that you  
17 all may not like or that may be in disregard to  
18 your intentions, so we want to give you all that  
19 opportunity too.

20 With that we are not going to make a  
21 ruling on heard and taken today until this one  
22 issue is resolved. As soon as it is, or not, or

1    whatever, we will make our ruling.  So is there  
2    anything further, do we need to schedule another  
3    date or anything?  No?

4           MR. HANZLIK:  When would you propose to mark the  
5    record heard and taken?

6           JUDGE MORAN:  As soon as something is resolved,  
7    either by the parties on this situation or by us on  
8    that situation.  Okay?

9           MR. FOSCO:  Your Honor, do we need to set the end  
10   of next week for submitting the draft order or  
11   does --

12          JUDGE MORAN:  I tried to get a feel, but --

13          MR. FOSCO:  We'll just file it as soon as --

14          JUDGE MORAN:  We'll just ask all the parties to  
15   work as diligently as they can on it.  And while  
16   we're not -- we're continuing the matter generally,  
17   thank you, with no date yet.  Okay, thank you.

18                               (Whereupon the above-entitled  
19                               matter was continued sine die.)

20

21

22